

PREVAILED

Roll Call No. \_\_\_\_\_

FAILED

Ayes \_\_\_\_\_

WITHDRAWN

Noes \_\_\_\_\_

RULED OUT OF ORDER

# HOUSE MOTION \_\_\_\_\_

MR. SPEAKER:

I move that House Bill 1074 be amended to read as follows:

- 1 Page 5, after line 14, begin a new paragraph and insert:
- 2 "SECTION 3. IC 35-50-2-9, AS AMENDED BY P.L.99-2007,
- 3 SECTION 213, IS AMENDED TO READ AS FOLLOWS
- 4 [EFFECTIVE JULY 1, 2008]: Sec. 9. (a) **Except as provided in**
- 5 **subsection (m), this section does not apply to a defendant described**
- 6 **in section 9.5 of this chapter.**The state may seek either a death
- 7 sentence or a sentence of life imprisonment without parole for murder
- 8 by alleging, on a page separate from the rest of the charging instrument,
- 9 the existence of at least one (1) of the aggravating circumstances listed
- 10 in subsection (b). In the sentencing hearing after a person is convicted
- 11 of murder, the state must prove beyond a reasonable doubt the
- 12 existence of at least one (1) of the aggravating circumstances alleged.
- 13 However, the state may not proceed against a defendant under this
- 14 section if a court determines at a pretrial hearing under IC 35-36-9 that
- 15 the defendant is an individual with mental retardation.
- 16 (b) The aggravating circumstances are as follows:
- 17 (1) The defendant committed the murder by intentionally killing
- 18 the victim while committing or attempting to commit any of the
- 19 following:
- 20 (A) Arson (IC 35-43-1-1).
- 21 (B) Burglary (IC 35-43-2-1).
- 22 (C) Child molesting (IC 35-42-4-3).
- 23 (D) Criminal deviate conduct (IC 35-42-4-2).
- 24 (E) Kidnapping (IC 35-42-3-2).

- 1 (F) Rape (IC 35-42-4-1).
- 2 (G) Robbery (IC 35-42-5-1).
- 3 (H) Carjacking (IC 35-42-5-2).
- 4 (I) Criminal gang activity (IC 35-45-9-3).
- 5 (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).
- 6 (2) The defendant committed the murder by the unlawful
- 7 detonation of an explosive with intent to injure person or damage
- 8 property.
- 9 (3) The defendant committed the murder by lying in wait.
- 10 (4) The defendant who committed the murder was hired to kill.
- 11 (5) The defendant committed the murder by hiring another person
- 12 to kill.
- 13 (6) The victim of the murder was a corrections employee,
- 14 probation officer, parole officer, community corrections worker,
- 15 home detention officer, fireman, **or** judge, **or** ~~law enforcement~~
- 16 ~~officer~~, and either:
- 17 (A) the victim was acting in the course of duty; or
- 18 (B) the murder was motivated by an act the victim performed
- 19 while acting in the course of duty.
- 20 (7) The defendant has been convicted of another murder.
- 21 (8) The defendant has committed another murder, at any time,
- 22 regardless of whether the defendant has been convicted of that
- 23 other murder.
- 24 (9) The defendant was:
- 25 (A) under the custody of the department of correction;
- 26 (B) under the custody of a county sheriff;
- 27 (C) on probation after receiving a sentence for the commission
- 28 of a felony; or
- 29 (D) on parole;
- 30 at the time the murder was committed.
- 31 (10) The defendant dismembered the victim.
- 32 (11) The defendant burned, mutilated, or tortured the victim while
- 33 the victim was alive.
- 34 (12) The victim of the murder was less than twelve (12) years of
- 35 age.
- 36 (13) The victim was a victim of any of the following offenses for
- 37 which the defendant was convicted:
- 38 (A) Battery as a Class D felony or as a Class C felony under
- 39 IC 35-42-2-1.
- 40 (B) Kidnapping (IC 35-42-3-2).
- 41 (C) Criminal confinement (IC 35-42-3-3).
- 42 (D) A sex crime under IC 35-42-4.
- 43 (14) The victim of the murder was listed by the state or known by
- 44 the defendant to be a witness against the defendant and the
- 45 defendant committed the murder with the intent to prevent the
- 46 person from testifying.

(15) The defendant committed the murder by intentionally discharging a firearm (as defined in IC 35-47-1-5):

(A) into an inhabited dwelling; or

(B) from a vehicle.

(16) The victim of the murder was pregnant and the murder resulted in the intentional killing of a fetus that has attained viability (as defined in IC 16-18-2-365).

(c) The mitigating circumstances that may be considered under this section are as follows:

(1) The defendant has no significant history of prior criminal conduct.

(2) The defendant was under the influence of extreme mental or emotional disturbance when the murder was committed.

(3) The victim was a participant in or consented to the defendant's conduct.

(4) The defendant was an accomplice in a murder committed by another person, and the defendant's participation was relatively minor.

(5) The defendant acted under the substantial domination of another person.

(6) The defendant's capacity to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired as a result of mental disease or defect or of intoxication.

(7) The defendant was less than eighteen (18) years of age at the time the murder was committed.

(8) Any other circumstances appropriate for consideration.

(d) If the defendant was convicted of murder in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing. The jury or the court may consider all the evidence introduced at the trial stage of the proceedings, together with new evidence presented at the sentencing hearing. The court shall instruct the jury concerning the statutory penalties for murder and any other offenses for which the defendant was convicted, the potential for consecutive or concurrent sentencing, and the availability of good time credit and clemency. The court shall instruct the jury that, in order for the jury to recommend to the court that the death penalty or life imprisonment without parole should be imposed, the jury must find at least one (1) aggravating circumstance beyond a reasonable doubt as described in subsection (1) and shall provide a special verdict form for each aggravating circumstance alleged. The defendant may present any additional evidence relevant to:

(1) the aggravating circumstances alleged; or

(2) any of the mitigating circumstances listed in subsection (c).

(e) For a defendant sentenced after June 30, 2002, except as

provided by IC 35-36-9, if the hearing is by jury, the jury shall recommend to the court whether the death penalty or life imprisonment without parole, or neither, should be imposed. The jury may recommend:

(1) the death penalty; or

(2) life imprisonment without parole;

only if it makes the findings described in subsection (l). If the jury reaches a sentencing recommendation, the court shall sentence the defendant accordingly. After a court pronounces sentence, a representative of the victim's family and friends may present a statement regarding the impact of the crime on family and friends. The impact statement may be submitted in writing or given orally by the representative. The statement shall be given in the presence of the defendant.

(f) If a jury is unable to agree on a sentence recommendation after reasonable deliberations, the court shall discharge the jury and proceed as if the hearing had been to the court alone.

(g) If the hearing is to the court alone, except as provided by IC 35-36-9, the court shall:

(1) sentence the defendant to death; or

(2) impose a term of life imprisonment without parole;

only if it makes the findings described in subsection (l).

(h) If a court sentences a defendant to death, the court shall order the defendant's execution to be carried out not later than one (1) year and one (1) day after the date the defendant was convicted. The supreme court has exclusive jurisdiction to stay the execution of a death sentence. If the supreme court stays the execution of a death sentence, the supreme court shall order a new date for the defendant's execution.

(i) If a person sentenced to death by a court files a petition for post-conviction relief, the court, not later than ninety (90) days after the date the petition is filed, shall set a date to hold a hearing to consider the petition. If a court does not, within the ninety (90) day period, set the date to hold the hearing to consider the petition, the court's failure to set the hearing date is not a basis for additional post-conviction relief. The attorney general shall answer the petition for post-conviction relief on behalf of the state. At the request of the attorney general, a prosecuting attorney shall assist the attorney general. The court shall enter written findings of fact and conclusions of law concerning the petition not later than ninety (90) days after the date the hearing concludes. However, if the court determines that the petition is without merit, the court may dismiss the petition within ninety (90) days without conducting a hearing under this subsection.

(j) A death sentence is subject to automatic review by the supreme court. The review, which shall be heard under rules adopted by the supreme court, shall be given priority over all other cases. The supreme

1 court's review must take into consideration all claims that the:

2 (1) conviction or sentence was in violation of the:

3 (A) Constitution of the State of Indiana; or

4 (B) Constitution of the United States;

5 (2) sentencing court was without jurisdiction to impose a  
6 sentence; and

7 (3) sentence:

8 (A) exceeds the maximum sentence authorized by law; or

9 (B) is otherwise erroneous.

10 If the supreme court cannot complete its review by the date set by the  
11 sentencing court for the defendant's execution under subsection (h), the  
12 supreme court shall stay the execution of the death sentence and set a  
13 new date to carry out the defendant's execution.

14 (k) A person who has been sentenced to death and who has  
15 completed state post-conviction review proceedings may file a written  
16 petition with the supreme court seeking to present new evidence  
17 challenging the person's guilt or the appropriateness of the death  
18 sentence if the person serves notice on the attorney general. The  
19 supreme court shall determine, with or without a hearing, whether the  
20 person has presented previously undiscovered evidence that  
21 undermines confidence in the conviction or the death sentence. If  
22 necessary, the supreme court may remand the case to the trial court for  
23 an evidentiary hearing to consider the new evidence and its effect on  
24 the person's conviction and death sentence. The supreme court may not  
25 make a determination in the person's favor nor make a decision to  
26 remand the case to the trial court for an evidentiary hearing without  
27 first providing the attorney general with an opportunity to be heard on  
28 the matter.

29 (l) Before a sentence may be imposed under this section, the jury,  
30 in a proceeding under subsection (e), or the court, in a proceeding  
31 under subsection (g), must find that:

32 (1) the state has proved beyond a reasonable doubt that at least  
33 one (1) of the aggravating circumstances listed in subsection (b)  
34 exists; and

35 (2) any mitigating circumstances that exist are outweighed by the  
36 aggravating circumstance or circumstances.

37 **(m) The state may proceed against a defendant who is alleged to**  
38 **have committed murder and at least one (1) aggravating**  
39 **circumstance described in section 9.5(a) of this chapter and in**  
40 **subsection (b). If the state proceeds against a defendant who is**  
41 **alleged to have committed murder and at least one (1) aggravating**  
42 **circumstance described in section 9.5(a) of this chapter and in**  
43 **subsection (b), the procedures described in:**

44 (1) this section apply to the proceedings concerning the  
45 aggravating circumstances described in subsection (b); and

46 (2) section 9.5 of this chapter apply to the proceedings

concerning the aggravating circumstances described in subsection (b).

Procedures described in this section and section 9.5 of this chapter shall be combined if they are not inconsistent with each other.

SECTION 4. IC 35-50-2-9.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 9.5. (a) If the prosecuting attorney has reason to believe that the defendant committed murder and the victim was a law enforcement officer:

- (1) acting in the line of duty (including an off duty officer who identified himself or herself as a law enforcement officer); or
- (2) whose murder was motivated by an act the law enforcement officer performed while acting in the course of duty;

the state shall seek either a death sentence or a sentence of life imprisonment without parole for murder by alleging the existence of one (1) or both of these aggravating circumstances on a page separate from the rest of the charging instrument. However, the state may not proceed against a defendant under this section if a court determines at a pretrial hearing under IC 35-36-9 that the defendant is a mentally retarded individual.

(b) If the defendant was convicted of murder in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall conduct the sentencing hearing. The jury or the court may consider all the evidence introduced at the trial stage of the proceedings, together with new evidence presented at the sentencing hearing. The court shall instruct the jury concerning the statutory penalties for murder and any other offenses for which the defendant was convicted, the potential for consecutive or concurrent sentencing, and the availability of good time credit and clemency. The court shall instruct the jury that, in order for the jury to recommend to the court that the death penalty or life imprisonment without parole should be imposed, the jury must find beyond a reasonable doubt the existence of at least one (1) of the aggravating circumstances described in subsection (a), and shall provide a special verdict form for these aggravating circumstances. The defendant may present any additional evidence relevant to:

- (1) the aggravating circumstances alleged; or
- (2) any of the mitigating circumstances listed in subsection (c).

(c) The mitigating circumstances that may be considered under this section are as follows:

- (1) The defendant has no significant history of prior criminal conduct.
- (2) The defendant was under the influence of extreme mental or emotional disturbance when the murder was committed.

(3) The victim was a participant in or consented to the defendant's conduct.

(4) The defendant was an accomplice in a murder committed by another person, and the defendant's participation was relatively minor.

(5) The defendant acted under the substantial domination of another person.

(6) The defendant's capacity to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired as a result of mental disease or defect or of intoxication.

(7) The defendant was less than eighteen (18) years of age at the time the murder was committed.

(8) Any other circumstances appropriate for consideration.

(d) Except as provided by IC 35-36-9, if the hearing is by jury, the jury shall recommend to the court whether the death penalty or life imprisonment without parole should be imposed. The jury may recommend:

(1) the death penalty; or

(2) life imprisonment without parole;

only if it makes the findings described in subsection (k). If the jury makes the findings described in subsection (k), the jury may not recommend that the defendant be sentenced to a term of years. If the state seeks a sentence of life imprisonment without parole and does not seek the death penalty, the jury shall recommend a sentence of life imprisonment without parole if it makes the findings described in subsection (k). If the jury reaches a sentencing recommendation, the court shall sentence the defendant accordingly. After a court pronounces sentence, a representative of the victim's family and friends may present a statement regarding the impact of the crime on family and friends. The impact statement may be submitted in writing or given orally by the representative. The statement shall be given in the presence of the defendant.

(e) If a jury is unable to agree on a sentence recommendation after reasonable deliberations, the court shall discharge the jury and proceed as if the hearing had been to the court alone.

(f) If the hearing is to the court alone, except as provided by IC 35-36-9, the court shall:

(1) sentence the defendant to death; or

(2) impose a term of life imprisonment without parole;

if it makes the findings described in subsection (k). If the court makes the findings described in subsection (k), the court may not sentence the defendant to a term of years. If the state seeks a sentence of life imprisonment without parole and does not seek the death penalty, the court shall impose a sentence of life imprisonment without parole if it makes the findings described in

1 subsection (k).

2 (g) If a court sentences a defendant to death, the court shall  
3 order the defendant's execution to be carried out not later than one  
4 (1) year and one (1) day after the date the defendant was convicted.  
5 The supreme court has exclusive jurisdiction to stay the execution  
6 of a death sentence. If the supreme court stays the execution of a  
7 death sentence, the supreme court shall order a new date for the  
8 defendant's execution.

9 (h) If a person sentenced to death by a court files a petition for  
10 postconviction relief, the court, not later than ninety (90) days after  
11 the date the petition is filed, shall set a date to hold a hearing to  
12 consider the petition. If a court does not, within the ninety (90) day  
13 period, set the date to hold the hearing to consider the petition, the  
14 court's failure to set the hearing date is not a basis for additional  
15 postconviction relief. The attorney general shall answer the  
16 petition for postconviction relief on behalf of the state. At the  
17 request of the attorney general, a prosecuting attorney shall assist  
18 the attorney general. The court shall enter written findings of fact  
19 and conclusions of law concerning the petition not later than ninety  
20 (90) days after the date the hearing concludes. However, if the  
21 court determines that the petition is without merit, the court may  
22 dismiss the petition within ninety (90) days without conducting a  
23 hearing under this subsection.

24 (i) A death sentence is subject to automatic review by the  
25 supreme court. The review, which shall be heard under rules  
26 adopted by the supreme court, shall be given priority over all other  
27 cases. The supreme court's review must take into consideration all  
28 claims that the:

29 (1) conviction or sentence was in violation of the:

30 (A) Constitution of the State of Indiana; or

31 (B) Constitution of the United States;

32 (2) sentencing court was without jurisdiction to impose a  
33 sentence; and

34 (3) sentence:

35 (A) exceeds the maximum sentence authorized by law; or

36 (B) is otherwise erroneous.

37 If the supreme court cannot complete its review by the date set by  
38 the sentencing court for the defendant's execution under subsection  
39 (g), the supreme court shall stay the execution of the death sentence  
40 and set a new date to carry out the defendant's execution.

41 (j) A person who has been sentenced to death and who has  
42 completed state postconviction review proceedings may file a  
43 written petition with the supreme court seeking to present new  
44 evidence challenging the person's guilt or the appropriateness of  
45 the death sentence if the person serves notice on the attorney  
46 general. The supreme court shall determine, with or without a  
47 hearing, whether the person has presented previously undiscovered

evidence that undermines confidence in the conviction or the death sentence. If necessary, the supreme court may remand the case to the trial court for an evidentiary hearing to consider the new evidence and its effect on the person's conviction and death sentence. The supreme court may not make a determination in the person's favor nor make a decision to remand the case to the trial court for an evidentiary hearing without first providing the attorney general with an opportunity to be heard on the matter.

(k) Before a sentence may be imposed under this section, the jury, in a proceeding under subsection (d), or the court, in a proceeding under subsection (f), must find that the state has proved beyond a reasonable doubt that at least one (1) of the aggravating circumstances listed in subsection (a) exists.

(l) The state may proceed against a defendant who is alleged to have committed murder and at least one (1) aggravating circumstance described in subsection (a) and in section 9(b) of this chapter. If the state proceeds against a defendant who is alleged to have committed murder and at least one (1) aggravating circumstance described in subsection (a) and in section 9(b) of this chapter, the procedures described in:

(1) this section apply to the proceedings concerning the aggravating circumstances described in subsection (a); and

(2) section 9 of this chapter apply to the proceedings concerning the aggravating circumstances described in section 9(b) of this chapter.

Procedures described in this section and section 9 of this chapter shall be combined if they are not inconsistent with each other.

SECTION 5. [EFFECTIVE JULY 1, 2008] IC 35-50-2-9, as amended by this act, and IC 35-50-2-9.5, as added by this act, apply only to crimes committed after June 30, 2008."

(Reference is to HB 1074 as printed January 22, 2008.)

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Representative Walorski